

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON AT SPOKANE

KAY CHARLENE BENNET, aka KAY } NO. 09-0042
CHARLENE GRAHAM, }
Plaintiff, } ANSWER TO PLAINTIFF'S
v. } COMPLAINT FOR ALLEGED
ENCORE RECEIVABLE } VIOLATIONS OF THE FAIR
MANAGEMENT, INC., } DEBT COLLECTION
Defendant. } PRACTICES ACT AND STATE
CONSUMER PROTECTION
ACT

COMES NOW Defendant Encore Receivable Management, Inc., and for its Answer to Plaintiff's Complaint, states as follows:

I. STATEMENT OF THE CASE

1. Encore admits the statement in Paragraph 1.1 of Plaintiff's Complaint that Plaintiff has filed a claim for injunctive relief, but denies that she states a claim that would entitle her to relief.

ANSWER TO PLAINTIFF'S COMPLAINT

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II. PARTIES

2. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 2.1 of Plaintiff's Complaint and, therefore, denies the same for the present time.

3. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 2.2 of Plaintiff's Complaint and, therefore, denies the same for the present time.

4. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 2.3 of Plaintiff's Complaint and, therefore, denies the same for the present time.

5. Paragraph 2.4 of the Complaint states a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

6. Encore admits the allegations in Paragraph 2.5 of the Complaint.

7. Encore admits the allegations in Paragraph 2.6 of the Complaint.

8. Encore admits that it falls within the definition of a debt collector under the FDCPA, 15 U.S.C. § 1692a(6), but denies that the FDCPA applies to this case and denies any remaining allegations in Paragraph 2.7 of Plaintiff's Complaint.

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9. Encore admits the allegations in Paragraph 2.8 of the Complaint.

III. JURISDICTION AND VENUE

10. Encore admits generally the assertion in the first unlabeled Paragraph under section III of Plaintiff's Complaint that jurisdiction and venue could properly be found in the Spokane County Superior Court. Encore asserts that this case, however, has been properly removed to the Eastern District of Washington, United States District Court, which court generally has jurisdiction over claims arising under 15 U.S.C. § 1692 et. seq. and is proper venue for this case. Encore denies that Plaintiff has any claim herein.

11. Encore denies the allegations in the second unlabeled Paragraph under section III of Plaintiff's Complaint.

IV. FACTS

12. Encore admits the allegations in Paragraph 4.1 of the Complaint.
13. Encore lacks sufficient knowledge to admit or deny the allegation in Paragraph 4.2 of Plaintiff's Complaint and, therefore, denies the same for the present time.

14. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 4.3 of Plaintiff's Complaint and, therefore, denies the same for the

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1 present time.

2 15. Encore lacks sufficient knowledge to admit or deny the allegations
3 in Paragraph 4.4 of Plaintiff's Complaint and, therefore, denies the same for the
4 present time.

5 16. Encore lacks sufficient knowledge to admit or deny the allegations
6 in Paragraph 4.5 of Plaintiff's Complaint and, therefore, denies the same for the
7 present time.

8 17. Encore denies the allegations in Paragraph 4.6 of the Complaint.
9 Encore further states that it has a contract to provide collection services to
10 various creditors, and it is not the owner, assignee, or transferee of this debt.

11 18. Encore admits the allegations in Paragraph 4.7 of the Complaint.

12 19. Encore admits that December 23, 2008, is two days before
13 Christmas. Encore lacks sufficient knowledge to admit or deny the remaining
14 allegations in Paragraph 4.8 of Plaintiff's Complaint and, therefore, denies the
15 same for the present time.

16 20. Encore denies the allegations in Paragraph 4.9 of the Complaint.

17 21. Encore denies the allegations in Paragraph 4.10 of the Complaint.

18 22. Encore lacks sufficient knowledge to admit or deny the allegations

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in Paragraph 4.11 of Plaintiff's Complaint and, therefore, denies the same for the present time.

23. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 4.12 of Plaintiff's Complaint and, therefore, denies the same for the present time.

24. Encore lacks sufficient knowledge to admit or deny the allegations in Paragraph 4.13 of Plaintiff's Complaint and, therefore, denies the same for the present time.

25. Encore denies the allegations in Paragraph 4.14 of the Complaint.

V. FAIR DEBT COLLECTION PRACTICES ACT

(Application of the FDCPA)

26. Encore repeats and restates its responses in Paragraphs 1 through 25 above as if fully set forth herein.

27. Paragraph 5.2 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

28. Paragraph 5.3 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

29. Paragraph 5.4 of Plaintiff's Complaint states the law. To the

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extent that any allegations are made against Encore, such allegations are denied.

30. Encore admits that it falls within the definition of a debt collector under the FDCPA, 15 U.S.C. § 1692a(6), but denies that the FDCPA applies to this case and denies any remaining allegations in Paragraph 5.5 of Plaintiff's Complaint.

31. Encore denies the allegations in Paragraph 5.6 of the Complaint.

VI. FIRST CAUSE OF ACTION

Alleged Fair Debt Collection Practices Act Violation

(Alleged False, Deceptive, or Misleading Representations)

32. Encore repeats and restates its responses in Paragraphs 1 through 31 above, as if fully set forth herein.

33. Paragraph 6.2 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

34. Paragraph 6.3 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

35. Paragraph 6.4 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

36. Paragraph 6.5 of Plaintiff's Complaint states the law. To the

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extent that any allegations are made against Encore, such allegations are denied.

37. Encore denies the allegations in Paragraph 6.6 of the Complaint.

38. Encore denies the allegations in Paragraph 6.7 of the Complaint.

39. Encore denies the allegations in Paragraph 6.8 of the Complaint.

40. Paragraph 6.9 of Plaintiff's Complaint states a legal conclusion.

Further, Encore denies the allegations in Paragraph 6.9 of Plaintiff's Complaint.

41. Paragraph 6.10 of Plaintiff's Complaint states a legal conclusion.

Further, Encore denies the allegations in Paragraph 6.10 of the Complaint.

42. Encore denies the allegations in Paragraph 6.11 of the Complaint.

43. Encore denies the allegations in Paragraph 6.12 of the Complaint.

VII. SECOND CAUSE OF ACTION

(Alleged Unfair Harassment - Communication)

44. Encore repeats and restates its responses in Paragraphs 1 through 43 above, as if fully set forth herein.

45. Paragraph 7.2 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

46. Encore denies the allegations in Paragraph 7.3 of Plaintiff's Complaint.

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47. Encore denies the allegations in Paragraph 7.4 of the Complaint.
48. Encore denies the allegations in Paragraph 7.5 of the Complaint.
49. Encore denies the allegations in Paragraph 7.6 of the Complaint.
50. Encore denies the allegations in Paragraph 7.7 of the Complaint.
51. Encore denies the allegations in Paragraph 7.8 of the Complaint.
52. Encore denies the allegations in Paragraph 7.9 of the Complaint.

VIII. THIRD CAUSE OF ACTION

(Alleged State Collection Agency Act Violation)

53. Encore repeats and restates its responses in Paragraphs 1 through 52 above, as if fully set forth herein.

54. Paragraph 8.2 of Plaintiff's Complaint states the law. To the extent that any allegations are made against Encore, such allegations are denied.

55. Paragraph 8.3 of the Complaint makes a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

56. Encore denies the allegations in Paragraph 8.4 of the Complaint.

57 Encore denies the allegations in Paragraph 8.5 of the Complaint

⁵⁸ Encore denies the allegations in Paragraph 8.6 of the Complaint.

⁵⁹ Encore denies the allegations in Paragraph 8.7 of the Complaint.

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1 IX. FOURTH CAUSE OF ACTION

2 (Alleged Consumer Protection Act Violation)

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4 60. Encore repeats and restates its responses in Paragraphs 1 through
5 59 above, as if fully set forth herein.

6 61. Encore denies the allegations in Paragraph 9.2 of the Complaint.

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8 62. Paragraph 9.3 of Plaintiff's Complaint states the law. To the
9 extent that any allegations are made against Encore, such allegations are denied.

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11 63. Paragraph 9.4 of the Complaint makes a legal conclusion. To the
12 extent that any allegations are made against Encore, such allegations are denied.

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14 64. Paragraph 9.5 of the Complaint makes a legal conclusion. To the
15 extent that any allegations are made against Encore, such allegations are denied.

16 65. Encore denies the allegations in Paragraph 9.6 of the Complaint.

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18 66. Paragraph 9.7 of Plaintiff's Complaint purports to quote a case,
19 and makes a legal conclusion. To the extent that any allegations are made
20 against Encore, such allegations are denied.

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22 67. Paragraph 9.8 of the Complaint makes a legal conclusion. To the
23 extent that any allegations are made against Encore, such allegations are denied.

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25 68. Paragraph 9.9 of the Complaint makes a legal conclusion. To the

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1 extent that any allegations are made against Encore, such allegations are denied.

2 69. Paragraph 9.10 of the Complaint makes a legal conclusion. To the
3 extent that any allegations are made against Encore, such allegations are denied.

4 70. Paragraph 9.11 of the Complaint purports to quote a case. To the
5 extent that any allegations are made against Encore, such allegations are denied.

6 71. Paragraph 9.12 of the Complaint makes a legal conclusion.
7 Further, Encore denies the allegations in Paragraph 9.12 of the Complaint.

8 72. Paragraph 9.13 of the Complaint purports to state the law. To the
9 extent that any allegations are made against Encore, such allegations are denied.

10 73. Paragraph 9.14 of the Complaint purports to state the law. To the
11 extent that any allegations are made against Encore, such allegations are denied.

12 74. Encore denies the allegations in Paragraph 9.15 of the Complaint.

13 75. Paragraph 9.16 of Plaintiff's Complaint makes a legal conclusion.
14 Further, Encore denies the allegations in Paragraph 9.16 of the Complaint.

15 76. Paragraph 9.17 of Plaintiff's Complaint makes a legal conclusion.
16 Further, Encore denies the allegations in Paragraph 9.17 of the Complaint.

17 77. Paragraph 9.18 of Plaintiff's Complaint makes a legal conclusion.
18 Further, Encore denies the allegations in Paragraph 9.18 of the Complaint.

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78. Encore denies the allegations in Paragraph 9.19 of the Complaint.

79. Encore denies the allegations in Paragraph 9.20 of the Complaint.

80. Encore denies the allegations in Paragraph 9.21 of the Complaint.

X. FIFTH CAUSE OF ACTION

(Alleged FDCPA - Outrage Violation)

81. Encore repeats and restates its responses in Paragraphs 1 through 80 above, as if fully set forth herein.

82. Paragraph 10.2 of the Complaint makes a legal conclusion. To the extent that any allegations are made against Encore, such allegations are denied.

83. Encore denies the allegations in Paragraph 10.3 of the Complaint.

84. Encore denies the allegations in Paragraph 10.4 of the Complaint.

85. Encore denies the allegations in Paragraph 10.5 of the Complaint.

86. Encore denies the allegations in Paragraph 10.6 of the Complaint.

⁸⁷ Encore denies the allegations in Paragraph 10.7 of the Complaint.

88 Encore denies the allegations in Paragraph 10.8 of the Complaint.

XI. PRAYER FOR RELIEF

89. Encore denies that Plaintiff is entitled to any of the relief requested in section XI, including sub-paragraphs A, B, C, D, E, F, G, H, I, J, K, and L.

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1 **XII. REQUEST FOR TRIAL BY JURY**

2 90. Encore denies that Plaintiff has any claim herein and, therefore, is
 3 not entitled to a jury trial in this action.

5 **XII. AFFIRMATIVE DEFENSES**

6 1. The Complaint fails to state a claim upon which relief can be
 7 granted.

9 2. Defendant Encore affirmatively states that it maintains thorough
 10 training procedures for all employees who participate in collection
 11 communications. Any collection communication, which allegedly violated the
 12 Fair Debt Collection Practices Act is subject to a bona fide error defense.
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15 WHEREFORE, Encore Receivable Management, Inc. prays that
 16 Plaintiff's Complaint be dismissed with prejudice, for its attorney's fees and
 17 costs incurred herein, and for such further and other relief as the Court deems
 18 just and equitable.

20 DATED this 18th day of February, 2009.

22 _____
 23 /s/ Stephen A. Bernheim
 24 Stephen A. Bernheim, WSBA #15225
 25 Attorney for Encore Receivable
 26 Management, Inc.

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 28 PLAINTIFF'S
 29 COMPLAINT